No. 18-966

IN THE

Supreme Court of the United States

DEPARTMENT OF COMMERCE, *et al.*,

Petitioners,

v.

NEW YORK, *et al.*,

Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the Second Circuit

BRIEF OF LAWYERS FOR CIVIL RIGHTS, LEAGUE OF UNITED LATIN AMERICAN CITIZENS, HUMAN RIGHTS CAMPAIGN, NATIONAL IMMIGRANT JUSTICE CENTER, AND OTHERS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the district court correctly applied the Administrative Procedure Act, 5 U.S.C. § 706(2), to conclude that the Secretary of Commerce's decision to add a citizenship question to the decennial census questionnaire was arbitrary and capricious and contrary to law.

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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici Lawyers for Civil Rights, League of United Latin American Citizens, Human Rights Campaign, National Immigrant Justice Center, Center for Constitutional Rights, Charles Hamilton Houston Institute for Race and Justice at Harvard Law School, Urban League of Eastern Massachusetts, Centro Presente, the Boston Foundation, Brazilian Worker Center, the Jewish Alliance for Law and Social Action, the Union of Minority Neighborhoods, Worcester Interfaith, Boston Chinatown Neighborhood Center, Massachusetts Voter Table, Neighbor to Neighbor Massachusetts Action Fund, Massachusetts Immigrant and Refugee Advocacy Coalition, Inquilinos Boricuas en Acción, and Sociedad Latina are nonprofit advocacy organizations committed to equality and justice for all. They work extensively with minority and vulnerable populations, including communities of color, immigrants, students, English Language Learners, and low-income families, and so have close contact with executive agencies and the programs they fund and administer. Accordingly, they are committed to maintaining the Administrative Procedure Act as a bulwark against arbitrary and oppressive agency action. They submit this brief to discuss the history and function of the Administrative Procedure Act, the rise of the administrative state, and the role of the Administrative

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[1] Counsel for all parties have consented to the filing of this brief. Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than the *amici curiae* and their counsel made any monetary contribution to the preparation or submission of this brief.

Procedure Act in ensuring vulnerable communities are represented in executive rule-making and program administration.

A full list of *amici*, with descriptions of each organization, is attached as an Appendix to this brief.

SUMMARY OF ARGUMENT

The rise of the administrative state since the 1930s has led to the creation of hundreds of federal agencies whose work impacts every facet of daily life. For some, particularly communities of color, low-income individuals, residents of rural areas, and immigrants, daily life is inextricably intertwined with programs administered by these agencies.

In 1946, Congress passed the Administrative Procedure Act (APA) with the intent of holding agencies accountable to the people and interests they serve, and ensuring that agencies did not abuse the significant power afforded to them through enabling legislation. Under the APA, an agency must adequately consider relevant evidence and important aspects of the problem before it acts; its decision must be rationally supported, and not arbitrary or capricious; its decision must not violate the law; and it must give a detailed explanation for its decision. When an agency switches course, it must provide a reasonable explanation for doing so. Congress, through the APA, entrusted the courts with enforcing these requirements. The APA requires courts to reverse an agency decision if it does not comport with these principles. In imposing basic procedural requirements, the APA protects core constitutional values of separation of powers and checks and balances across our tripartite system of government to avoid abuses of power at the expense of the populace.

The origins and legislative history of the APA demonstrate that it is designed to ensure agency accountability and transparency when an agency wields the significant power afforded to it. These values are of particular importance to individuals in the communities that *amici* serve, whose lives are inextricably intertwined with federal agencies. Federal agencies dictate minimum wage, administer critical food and housing assistance programs, regulate agricultural commodities relevant to the livelihoods of small farmers, and provide critical public benefits for veterans, people with disabilities, and young children. The APA requires that agencies consider the consequences of their actions on those who are most impacted by them; in many cases, these are the actual beneficiaries of a program, and individuals who may otherwise lack a voice in the political process. The APA is thus the vehicle by which communities of color, immigrants, and low-income individuals compel agencies to consider the human impact of an abstract policy or rule. It is the primary—if not only—mechanism by which our most vulnerable residents can have a say in the sweeping agency decisions that define their lives.

To enforce the APA, as the district court did in the case presently before the Court, is to uphold the rule of law and the fundamental protections the APA affords. Judicial scrutiny of agency action protects the people from agencies that overstep their bounds in the careful balance of power among the three branches of government. Courts are not asked to substitute their own judgment or policy views for that of agencies, but rather to ensure that agencies have engaged in reasoned decisionmaking.

Here, the Administrative Record reveals that the U.S. Department of Commerce did not satisfy the

requirements of the APA in making its decision to add a citizenship question to the 2020 census. The district court's determination that the Secretary of Commerce's action violated the APA should be affirmed. To hold otherwise would be to abdicate the responsibility of the courts to provide oversight of the processes employed by agencies in reaching decisions that impact the lives of everyone within the United States. It would leave members of our most vulnerable communities, who are often excluded from or unheard in the political process, susceptible to the abuses of arbitrary agency action and the whims of unchecked agency officials. And it would defeat the fundamental concept of checks and balances central to this nation's founding.

ARGUMENT

This nation was formed with several foundational principles in mind, among them the belief that a system of checks and balances among the branches of government could prevent an accumulation of power in one branch of government and protect the public interest. *See, e.g.*, The Federalist No. 47, at 271 (James Madison) (Am. Bar Ass'n ed., 2009); The Federalist No. 51, at 294 (James Madison) (Am. Bar Ass'n ed., 2009). Since the 1930s, administrative agencies, independent creatures of the executive branch but often referred to as the "fourth branch" of government, have assumed significant regulatory, administrative, and adjudicative responsibilities that today "touch[] almost every aspect of daily life." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 499 (2010). These agencies make decisions with respect to regulations, funding, and access to programming that impact the general public in myriad ways. As governmental entities, it is fundamental

that these agencies remain accountable to and in service to the people whom they serve.

In 1946, Congress passed the Administrative Procedure Act (APA) to ensure that administrative agencies employ appropriate procedures in rulemaking, adjudication, and decisionmaking; that the results of these activities are reasonable; and that agency decisions are evidenced-based and justifiable to the public. The district court below correctly observed that "the APA exists to protect core constitutional and democratic values." *New York v. U.S. Dep't of Commerce*, 351 F. Supp. 3d 502, 518 (S.D.N.Y. 2019). The APA entrusts courts with enforcing its core values and protections by probing challenged agency actions to determine whether the agency's action was not arbitrary or capricious—that is, whether the agency "consider[ed] all important aspects of a problem; stud[ied] the relevant evidence and arrive[d] at a decision rationally supported by that evidence; compli[ed] with all applicable procedures and substantive laws; and articulate[d] the facts and reasons—the *real* reasons—for that decision." *Id.* at 518.

The function that the district court below properly performed in this case in evaluating the Secretary of Commerce's decision-making process, both as a matter of substance and a matter of procedure, cannot be taken lightly. Together, the APA and the courts that enforce it provide critical checks and balances on the exceptional power of administrative agencies. These agencies make decisions that impact millions of United States residents on a daily basis and in immensely personal ways. For many, federal agencies dictate their paycheck (by setting minimum wage), their housing (by providing Section 8 vouchers), the food they eat (through food assistance programs like WIC

and SNAP), their access to healthcare (through programs like Medicaid and Medicare), their access to education (through federal loans and Pell Grants), and their ability to earn a livelihood (through a wide variety of actions from the regulation of grain sales to funding for scientific research).

In particular, federal agencies play an outsized role for individuals in traditionally marginalized communities—communities of color, immigrant communities, low-income communities, and rural communities. For these individuals, agency action is not abstract or diffuse, but immediate and direct, governing everything from housing and education to nutritional and healthcare programs that seek to lift children and families out of poverty. These are precisely the communities that require the procedural and substantive protections of the APA. And it is these communities for whom federal agencies often function as the arbiter of last resort.

Reversal of the district court's decision below would compromise the integrity of the APA and the checks it places on unfettered agency authority. As is often the case with matters before this Court, the question presented by this case reaches beyond the parties of record. It affects not only the substantial numbers of people who will be deterred from completing the census because of a citizenship question, but also, broadly, all those whose lives are impacted by the decisions and programs of federal agencies. Accordingly, *amici* respectfully submit this brief to highlight for the Court the purpose and function of the APA, and to provide additional information regarding how significant the protections provided by the APA are to traditionally marginalized communities throughout the country.

I. The Purpose of the APA

A. The Problem of Unchecked New Deal Agencies

The APA arose out of a widespread concern that administrative agencies wielded substantial power but had minimal if any accountability, particularly to the people whom they served. As this Court observed after the passage of the APA:

> The [APA] was framed against a background of rapid expansion of the administrative process as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices. It created safeguards even narrower than the constitutional ones, against arbitrary official encroachment on private rights.

United States v. Morton Salt Co., 338 U.S. 632, 644 (1950).

During the New Deal, federal agencies operated with little public input and even less public information. *See* William Funk, *Public Participation and Transparency in Administrative Law – Three Examples as an Object Lesson*, 61 Admin. L. Rev. 171, 172 (2009). There was no right of access to agency records, no requirement that an agency's adoption of a rule take into account the views of interested parties, and no requirement that an agency provide a reasoned explanation for its action. *See id.* at 172-73. Any procedural rules were included in the enabling legislation delegating authority to an administrative agency. *See* Roni A. Elias, *The Legislative History of the Administrative Procedures Act*, 27 Fordham Envtl. L. Rev. 207, 209 (2016). As a result, the availability of

information regarding an agency's decision-making process and the opportunity for public comment varied by agency and by function.

The New Deal ushered in an unprecedented number of new administrative agencies, and expanded the role of the federal government and the federally funded programs available to those living within the United States. With these new agencies came a sense that they should be cohesively regulated. *See* Elias, *supra*, at 207-08. The concept of a comprehensive law that would impose limits on agencies' discretion and dictate procedural requirements for agency action took hold. *See id.* at 209. Several committees—one led by the American Bar Association (ABA), and two formed at the direction of President Roosevelt—undertook a comprehensive analysis of the need for agency accountability and issued formal reports of their findings. *See* President's Comm. on Admin. Mgmt., Administrative Management in the Government of the United States (1937) [hereinafter 1937 Committee Report]; *Report of the Special Committee on Administrative Law*, 63 Ann. Rep. A.B.A. 331 (1938) [hereinafter 1938 ABA Report]; Attorney Gen.'s Comm. on Admin. Procedure, Final Report (1941) [hereinafter 1941 AG Report].

A 1937 report issued by one of the special committees formed by the President described agencies as "a headless 'fourth branch' of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers" that were not supervised by Congress or controlled by the President, and that were only minimally "answerable to the courts." *See* 1937 Committee Report, *supra*, at 40. The Report expressed concern that administrative agencies, left unchecked, would defeat the principles of separation of powers amongst

a tripartite governmental system that the Founders envisioned. *Id.*

In its 1938 report, the ABA Special Committee also expressed concern that agencies lacked adequate checks upon their actions:

> The increased tasks of the central government and new demands upon federal administration involved in the shifting from agriculture to industry, from country to city, and from economic local self-sufficiency to economic unification and business transcending geographical lines, give rise to more rather than less need of checks upon the central authority to safeguard local needs in so vast a domain as the United States in which changes have come and are going on at such varying rates.

1938 ABA Report, *supra*, at 342-43.

The ABA Special Committee concluded that "New Deal agencies were acting without considered judgment, without due process, without sufficient consideration of the issues, and without granting parties the right to be heard or procedures for relief," and that "agencies were improperly blending modes of procedure that should be distinct, namely rulemaking, factual investigation, and adjudication." Elias, *supra*, at 210; *see* 1938 ABA Report, *supra*, at 346-51. The Committee specifically identified ten problematic tendencies of administrative officials that illustrated why checks on administrative action were needed, among them "to decide without a hearing" even when the statute expressly required one; "to make decisions on the basis of preformed opinions and prejudices," resulting in subjective decisionmaking; "to yield to

political pressure at the expense of the law"; and "to arbitrary rule making for administrative convenience at the expense of important interests." *See* 1938 ABA Report, *supra*, at 346-51; *see also* McNollgast, *The Political Origins of the Administrative Procedure Act*, 15 J. L., Econ., & Org. 180, 196 (1999).

The committee led by the Attorney General and tasked by President Roosevelt with assessing the need for administrative oversight identified similar concerns. In its 1941 report, the committee observed that "[a]n important and far-reaching defect in the field of administrative law has been a simple lack of adequate public information concerning its substance and procedure." 1941 AG Report, *supra*, at 25. It noted that the agencies could do more to address widely-expressed criticisms of the administrative process, such as the lack of publicly available information, lack of formal rulemaking, unclear decision-making processes, and the absence of consistent hearing procedures. *See id.* While acknowledging that administrative agencies could not and should not operate like a legislative body, the 1941 AG Report expressed that, at a minimum, agencies should "giv[e] adequate opportunity to all persons affected to present their views, the facts within their knowledge, and the dangers and benefits of alternative courses," and should be able to "elicit[] . . . the information, facts, and probabilities which are necessary to fair and intelligent action." *Id.* at 102.

B. The APA as the Statutory Means for Ensuring Agency Accountability and Transparency

It was with this increasing concern for the unchecked decision-making power of administrative agencies in

mind that Congress passed the APA in 1946.[2] *See* Administrative Procedure Act, Pub. L. 79-404, 60 Stat. 237 (enacted June 11, 1946) (current version at 5 U.S.C. §§ 551 *et seq.*).

The APA was intended in part to ensure that those who would be regulated by an agency would be informed of and could be heard in agency decision-making. *See* 1941 AG Report, *supra*, at 2; *see also* Funk, *supra*, at 173 ("[T]he APA was predicated on protecting persons whose legal rights were affected by agency action."). More specifically, the APA was designed to assure that the work of administrative agencies would be conducted

> according to established and published procedures which adequately protect the private interests involved, the making of only reasonable and authorized regulations, the settlement of disputes in accordance with the law and the evidence, the impartial conferring of authorized benefits or privileges, and the effectuation of the declared policies of Congress in full.

H.R. Rep. No. 1980, at 252 (1946); *see also generally* S. Rep. No. 752 (1945).

Thus, the APA aimed to "achiev[e] reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government,"

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[2] An initial bill drafted by the ABA Special Committee, the Walter-Logan bill, was passed by Congress but vetoed by President Roosevelt, who had tasked a separate committee led by the Attorney General with assessing the regulation of agency decisionmaking. *See generally* 1941 AG Report, *supra*. Further efforts to pass a bill stalled during World War II. *See* Elias, *supra*, at 210-11.

and to "afford[] private parties a means of knowing what their rights are and how they may protect them, while administrators are given a simple framework upon which to base such operations." H.R. Rep. No. 1980, at 250-51 (1946). By enabling the general public to know agency procedures and to access information regarding the bases for agency decisionmaking, the APA sought to remedy the lack of procedural protections and absence of transparency in agency actions. *See id.* at 255.

These purposes of transparency and accountability have since been acknowledged by courts applying the APA to review agency action. *See, e.g.*, *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992) (the APA "sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts"); *Sequoia Orange Co. v. Yeutter*, 973 F.2d 752, 758 (9th Cir. 1992) ("The procedural safeguards of the APA help ensure that government agencies are accountable and their decisions are reasoned"); *see also, e.g.*, *Ortego v. Weinberg*, 516 F.2d 1005, 1014 (5th Cir. 1975) ("[I]t is clear beyond cavil that Congress envisioned a new era of administrative accountability when it passed the APA. The statute was designed to have broad application and flexible, expanded remedies," and to provide persons with "an avenue for redress" from "arguably arbitrary or illegal agency action."); *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1027-28 (D.C. Cir. 1978) (the APA requires that agencies "infuse[] the administrative process with [a] degree of openness, explanation, and participatory democracy").

II. The APA's Requirements and the Lower Court's Application of Them

A. The Core Requirements of the APA

The APA imposes checks on agency activity by regulating agency rulemaking, adjudication, and discretionary decisionmaking. *See* Elias, *supra*, at 214. With respect to discretionary agency decisionmaking, which is at issue here, the APA imposes parameters on the decisions an agency may make and how an agency may reach a decision.[3] *See* 5 U.S.C. § 706. An agency action or decision may not be:

> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law;
>
> (E) unsupported by substantial evidence in [certain types of cases]; or
>
> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

5 U.S.C. § 706.

A robust body of case law has defined these parameters further, most significantly with respect to

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[3] Agency rulemaking is governed by the familiar notice-and-comment process. *See* 5 U.S.C. § 553(b)-(c). Agency adjudications require similar notice and opportunity to be heard, as well as due process protections in some instances. *See* 5 U.S.C. § 554(b)-(c).

those decisions that are "arbitrary and capricious." This Court has ruled that agency action is arbitrary and capricious, and must be set aside, where, among other circumstances:

> (1) the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise," *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983);
>
> (2) the agency's action is not based on a "reasoned analysis" indicating that the agency "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made,'" *id.* at 42-43 (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)); or
>
> (3) the agency failed to adequately justify a departure from past practice, *Mfrs. Ry. Co. v. Surface Transp. Bd.*, 676 F.3d 1094, 1096 (D.C. Cir. 2012) (Kavanaugh, J.); *see also Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

To put it briefly, to satisfy the APA, an agency's action must be "reasonable and reasonably explained." *Mfrs. Ry. Co.*, 676 F.3d at 1096.

B. The District Court's Application of the APA to the Secretary of Commerce's Action

In the case presently before the Court, Judge Furman of the U.S. District Court for the Southern District of New York concluded that the Secretary of Commerce's decision to add a citizenship question to the 2020 census violated the APA in four ways, each representing a core function of the APA in reining in the unchecked power of agencies to ensure transparency, accountability, and evidence-based decisionmaking. *See New York*, 351 F. Supp. 3d at 635.

First, the Secretary "ignored and violated" two clear statutory duties under the Census Act: "to rely on administrative records (rather than direct inquiries) to the 'maximum extent possible,'" and to "include citizenship as a subject to be included on the 2020 census questionnaire in a report to Congress" three years in advance. *Id.* at 635, 636. With respect to using administrative records in lieu of a census question, the Secretary "acted 'as though the choice . . . were a matter of complete indifference from the statutory point of view,' . . . . [when] Congress had already made the policy decision," thereby dictating the choice. *See id.* at 638 (citation omitted). With respect to the Census Act's requirement that the Secretary report the subjects and questions planned for the census in advance, Judge Furman observed that this requirement "is plainly intended to facilitate Congress's oversight of the Secretary, thereby enabling the legislature to fulfill its [own] 'constitutional duty.'" *Id.* at 641-42. In so doing, the Secretary acted "not in accordance with the law" by disregarding statutory limits on his authority, which is itself derived from Congress' delegation of responsibility to the

Secretary. *See id.* at 635, 636 (noting that the former violation was "a blatant disregard of a critical substantive limitation on the Secretary's delegated powers"); *see also* 5 U.S.C. § 706(2)(A).

Second, the decision was arbitrary and capricious, because there are "more effective and less costly means" available to collect citizenship data, and the choice to do so through a citizenship question in the census was not supported by the reasons the Secretary articulated. *See New York*, 351 F. Supp. 3d at 635. The Department did not satisfy the APA's requirement of evidence-based, logical, rational decisionmaking because it "entirely failed to consider an important aspect of the problem" and "offered an explanation for its decision that runs counter to the evidence before the agency." *See id.* at 647 (quoting *State Farm*, 463 U.S. at 43); *see also* 5 U.S.C. § 706(2)(A). In particular, Judge Furman noted that the Secretary's proffered reasons for the decision were "manifestly contrary to both evidence in the Administrative Record"—including information from the Census Bureau—"and common sense." *New York*, 351 F. Supp. 3d at 648-51. Where "all relevant evidence in the Administrative Record establishes that adding a citizenship question to the census will result in *less* accurate and *less* complete citizenship data," *id.* at 649-50, and where the Administrative Record revealed information regarding these and other potential problems a citizenship question would introduce that the Secretary failed to consider, *id.* at 651-54, the Secretary's decision was neither logical nor evidence-based, and therefore was arbitrary and capricious, and an abuse of agency power.

Finally, the Secretary's decision violated the APA because it was pretexual. *See id.* at 635, 660-54. The Secretary's stated rationale—"that a citizenship

question is needed to enhance [the U.S. Department of Justice's Voting Rights Act] enforcement efforts"—was not his actual rationale for adding the question. *See id.* at 664. The APA "requires that the grounds upon which the . . . agency acted be clearly disclosed," in part so that the court may "measure agency action against the relevant governing standard." *Id.* at 660 (internal quotation marks and citations omitted); *see SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("[T]he orderly functioning of the process of review requires that the grounds upon which the . . . agency acted be clearly disclosed and adequately sustained."). Where an agency provides a public rationale that is different from its real rationale, the agency defeats the purpose of the APA in ensuring transparency in agency decisionmaking, and further abuses its power by tricking the public into thinking it is advancing a particular goal or interest, when it is really advancing something else entirely. Such deception also impedes a court's review of the agency's action. *See* 5 U.S.C. § 706(2)(A).

III. The APA Provides Important Protections for Individuals Whose Lives Are Inextricably Intertwined with Federal Agencies

A. The Protective Components of the APA

The APA "sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts." *Franklin*, 505 U.S. at 796. It requires agencies to demonstrate that their processes are evidence-based, and to provide statements of general policy and interpretations that enable the public to understand the agency's action. It requires publication of agency rules and adjudicatory decisions, and public access to government records. It demands reasoned and transparent decisionmaking, so that

people may assess the validity of the agency's determination for themselves.

In so doing, the APA facilitates transparency and accountability of administrative agencies that wield significant power. *See, e.g.*, *Weyerhaeuser*, 590 F.2d at 1027-28 ("we are willing to entrust the Agency with wide-ranging regulatory discretion, and even, to a lesser extent, with an interpretive discretion vis-à-vis its statutory mandate, so long as we are assured that its promulgation process as a whole and in each of its major aspects provides a degree of public awareness, understanding, and participation commensurate with the complexity and intrusiveness of the resulting regulations"); *Sierra Club v. Costle*, 657 F.2d 298, 400-01 (D.C. Cir. 1981) ("the very legitimacy of general policymaking performed by unelected administrators depends in no small part upon the openness, accessibility, and amenability of these officials to the needs and ideas of the public from whom their ultimate authority derives, and upon whom their commands must fall"); *see also, e.g.*, *Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1146 (10th Cir. 2016) (Gorsuch, J.) ("if the agency were free to change the law retroactively based on shifting political winds, it could use that power to punish politically disfavored groups or individuals for conduct they can no longer alter"). The APA provides, at a minimum, the opportunity for an individual to learn more about why an agency has acted the way it did, and potentially to participate in the process leading to that decision. And if an individual impacted by that agency decision believes that it was unsound or unsupported, the APA provides her with a method of recourse: judicial review of the agency's decision.

Since its enactment, the APA has served a critical role in fostering transparency of and public participation in agency actions. *See* Funk, *supra*, at 173. In so doing, the APA functions to protect those whom the agencies serve.

B. The APA's Protective Components Are Critical to Individuals Who Are Affected by Federal Agencies on a Daily Basis

Federal agencies have a significant impact on day-to-day life for everyone living in the United States. *See* 1941 AG Report, *supra*, at 20 ("No single fact is more striking in a review of existing Federal administrative agencies than the variety of the duties which are entrusted to them to perform. This is true of many single agencies taken alone; it is true, above all, of the agencies taken as a group."); *see also City of Arlington v. FCC*, 569 U.S. 290, 315 (2013) (Roberts, C.J., joined by Kennedy and Alito, J.J., dissenting) (noting the "hundreds of federal agencies poking into every nook and cranny of daily life"). This daily impact cannot be overstated. As but a few examples, the U.S. Food and Drug Administration dictates how the ingredients of the foods we consume and the medications we rely upon when we are acutely or chronically ill must be labelled; the Federal Communications Commission's regulation of communications by radio, television, wire, satellite and cable impacts every single person with a landline, cell phone, radio, or television set in the United States; and the U.S. Department of Health and Human Services provides health insurance to a quarter of all Americans through its Medicare and Medicaid programs.[4]

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[4] Notably, funding allocation for many federal welfare programs is determined by census data. *See* U.S. DEP'T OF COMMERCE,

Federal agencies have an even greater—and much more direct—impact on the daily lives of often-marginalized communities, including people of color, low-income people, immigrants, rural residents, and people with disabilities. The U.S. Department of Labor's Wage and Hour Division sets the federal minimum wage, dictating how much (or how little) many Americans will be paid. The U.S. Department of Agriculture (USDA) promulgates standards for the quality and condition of agricultural commodities that

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USES OF CENSUS BUREAU DATA IN FEDERAL FUNDS DISTRIBUTION: A NEW DESIGN FOR THE 21ST CENTURY, UNITED STATES CENSUS BUREAU (2017), https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf; *see also New York*, 351 F. Supp. at 514, 596 n.44. In particular, allocation of resources for key programs like Title I Grants to Local Education Authorities; Special Education Grants; the State Children's Health Insurance Program; Head Start; the Supplemental Nutrition Program for Women, Infants, and Children; Unemployment Insurance administrative costs; Substance Abuse Prevention and Treatment Block Grants; and several other programs "rely in whole or part on the state's share of the total U.S. population." *New York*, 351 F. Supp. 3d at 514, 596 n.44. Funding for other programs, such as Temporary Assistance for Needy Families, the Crime Victims Fund, and the Low-Income Home Energy Assistance Program, is also determined at the city and county levels based on federal census-derived data. *Id.* at 597-98.

Judge Furman concluded that inclusion of the citizenship question on the 2020 census would "translate into a loss of political power and funds, among other harms," stemming from the shift in resource allocation derived from census data. *See id.* at 516. As discussed in this brief, the harms stemming from an affirmance of the Secretary's decision to include the citizenship question would include not only the immediate harms resulting from inaccurate census data driving program funding, but also the wide-ranging harms that would flow from an effective evisceration of the protections of the APA. *See infra*, Part IV.b.

have an impact on the bottom line of every farmer in the United States.[5] The USDA also administers critical food assistance programs such as SNAP, WIC, and the school lunch program. The U.S. Department of Housing and Urban Development facilitates subsidized housing through programs for elderly people, people with disabilities or HIV/AIDS, and people facing homelessness, as well as Section 8 vouchers. The Veterans Administration provides services for the veteran population, including the most severely wounded and disabled, and the Social Security Administration provides SSI benefits for disabled adults and children, as well as low-income adults over 65 years of age. Across agencies, there are federal efforts to tackle the opioid crisis and chronic illnesses.

Many of the most vulnerable individuals have multiple touchpoints with federal agencies. The programs administered by the U.S. Department of Health and Human Services (HHS) are but one example. Nearly one million low-income children per year are served by Head Start, an HHS-funded program that provides families with health, nutritional, and educational services, parental education, and referrals and family

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[5] In addition, the USDA, through the Farm Service Agency, provides access to credit for family-sized farmers and ranchers, racial and ethnic minority farmers, women farmers, urban farmers, tribal communities, and farmers using alternative farming methods. *See Farm Loan Programs*, U.S. DEP'T OF AGRIC., https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/index (last visited Mar. 27, 2019). In 2018, these subsidies exceeded $5 billion in loans. *See Executive Summary Farm Loan Programs, FY 2018 as of Sep 30, 2018*, U.S. DEP'T OF AGRIC., https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Farm-Loan-Programs/pdfs/program-data/Executive_Summary_FY18.pdf

advocacy.[6] HHS also provides grants to states to administer Temporary Assistance for Needy Families, a cash benefit for low-income families with children intended to help the transition from welfare to self-sufficiency.[7] Additionally, HHS administers the Children's Health Insurance Program, a partnership that provides low-cost health coverage for children (and in some states, pregnant women) who do not qualify for Medicaid.[8]

Even though many federal programs were created to protect people of color, immigrants, low-income individuals, and those living in rural areas, these communities have little say in how these programs are developed or administered. The rise of the administrative state has meant that an increasing number of governmental functions are performed by unelected officials, who are largely inaccessible to the populations they ostensibly serve. *See, e.g.*, *New Jersey v. Dep't of Health & Human Servs.*, 670 F.2d 1262, 1281 (3d Cir. 1981); *Sierra Club*, 657 F.2d at 400-01.

As a result, the APA's protections are of particular importance to those individuals and communities whose daily lives are most intertwined with federal agencies, and who are most likely to lack a voice in opaque agency proceedings. During the development of the APA, the 1941 AG Report acknowledged that agencies are meant to serve many, not few: "the purpose of Congress in creating or utilizing an administrative agency is to further some public

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[6] *See* FY 2020 BUDGET IN BRIEF, U.S. DEP'T OF HEALTH & HUMAN SERVS. 124, https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf.

[7] *See id.* at 132.

[8] *See id.* at 108.

interest or policy which it has embodied in law"; therefore "[p]owers must be effectively exercised in the public interest," and "must not be arbitrarily exercised or exercised with partiality for some individuals and discrimination against others." 1941 AG Report, *supra*, at 2. The APA was thus designed to protect those more likely to be disenfranchised from the agency decision-making process by requiring agencies to use evidence-based processes that must be shared with the general public, and by affording at least an opportunity for outside voices to be heard in some form. If the procedural protections of the APA are not enforced, the communities that are most impacted by federal agencies become even more excluded from what are intended to be publicly-minded, publicly-informed processes.

There are many cases in which courts have reversed agency action because the agency has not considered the consequences of its action for those most impacted by it, and therefore the agency's decision-making process did not comport with the APA. *Beno v. Shalala*, 30 F.3d 1057, 1069-70 (9th Cir. 1994), provides one such example. In *Beno*, the U.S. Court of Appeals for the Ninth Circuit reversed the denial of a request for a preliminary injunction enjoining California's experimental work-incentive project and attendant benefit cuts related to an HHS program, Aid to Families with Dependent Children (AFDC). The Court determined that the Secretary of HHS' waiver of federal law related to the project violated the APA, as the record contained a "stunning lack of evidence" that the Secretary considered the dangers the program posed to "the children and families the AFDC program was enacted to protect." *Id.* at 1070, 1074. The Court concluded that the Secretary was "required to consider plaintiffs' objections" that the experiment "endanger[ed] needy

children and [was] unnecessarily broad in scope." *Id.* at 1071. Given the "extraordinarily sparse administrative record" and dearth of evidence that the Secretary "considered the project's potential impact on human subjects," the Court vacated the waiver and remanded for consideration of the plaintiffs' objections. *Id.* at 1076; *see also Rodriguez v. United States*, 983 F. Supp. 1445, 1463 (S. D. Fla. 1997), *aff'd*, 169 F.3d 1342 (11th Cir. 1999) (concluding that retroactive application of a rule eliminating SSI and food stamp benefits to poor, blind, elderly, and disabled legal residents with pending benefit applications was "contrary to law and arbitrary and capricious in violation of the APA" because its retroactive application "would result in a manifest injustice," as the decision "affects accrued benefits to aliens and imposes unanticipated obligations" on the state and county in which they reside); *Stewart v. Azar*, 313 F. Supp. 3d 237, 259-260 (D.D.C. 2018) (vacating HHS Secretary's approval of pilot Medicaid program as "arbitrary and capricious" where Secretary "entirely failed to adequately consider Kentucky's estimate that 95,000 persons would leave its Medicaid rolls during the 5-year project" (quotation omitted)); *infra*, Part IV.b (collecting cases); *cf. Humane Soc'y of the U.S. v. Zinke*, 865 F.3d 585, 589 (D.C. Cir. 2017) (affirming vacation of U.S. Fish and Wildlife Service rule because the Service "failed to reasonably analyze or consider" the rule's impact on grey wolves, which the Service was tasked with protecting).

As noted by the *Beno* Court, the APA is the vehicle by which communities of color, immigrants, and low-income individuals compel agencies to consider the human impact of an abstract policy or rule. The APA's mandates force agency officials to consider the objections, concerns, and comments of a program's actual

beneficiaries. *See, e.g., Beno*, 30 F.3d at 1067-68 (stating that court "cannot agree" with Secretary's assertion that she is "not require[d] . . . to consider plaintiffs' objections" regarding the consequences of the program for those who would lose their income). It is the primary—if not only— mechanism by which our most vulnerable residents can have a say in the sweeping agency decisions that define their lives.

IV. To Enforce the APA Is to Uphold the Rule of Law

A. Judicial Review of Agency Action Is Appropriate and Necessary

Critically, the APA tasked the courts with providing oversight of administrative agencies. *See* 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action . . . is entitled to judicial review thereof."). In the earliest discussions among committees that were contemplating administrative oversight, the judiciary played a central role in policing the bounds of reasonableness of agency actions. *See* 1938 ABA Report, *supra*, at 352 ("[T]he common law . . . . is suspicious of administrative action and seeks to hold it, as it does all other action, to limits fixed by law and seeks to prevent arbitrary and capricious exercise of administrative powers as it does in case of all other powers."). In enacting the APA, Congress expressed that it would be "the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection." *See* H.R. Rep. No. 1980, at 278 (1946). The courts would be the final arbiters of "whether on the whole of the proofs brought to their attention the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action or inaction." *Id.* at 279. In addition, under the APA the courts "are required to decide all relevant

questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action." *Id.* at 278. The APA authorized the courts not only to deem certain agency actions unlawful, but also to compel action that is unlawfully withheld or unreasonably delayed. *Id.*; *see* 5 U.S.C. § 706(1)-(2).

Indeed, this delegation of oversight responsibility for administrative agencies is consistent with the foundational principle of checks and balances within American government. *See, e.g.*, Jeremy Waldron, *Separation of Powers in Thought and Practice?*, 54 B.C. L. Rev. 433, 433, 438 (2013) ("the principle of checks and balances . . . hold[s] that the exercise of power by any one power-holder needs to be balanced and checked by the exercise of power by other power-holders"; "it is [t]he principle that requires the ordinary concurrence of one governmental entity in the actions of another"). By requiring the courts to review challenged agency actions, the APA upholds the duty of the judiciary "to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch.) 137, 177 (1803); *see City of Arlington*, 569 U.S. at 316-17 (Roberts, C.J., joined by Kennedy and Alito, J.J., dissenting) ("The rise of the modern administrative state has not changed that duty. Indeed, the [APA], governing judicial review of most agency action, instructs reviewing courts to decide 'all relevant questions of law.'" (citing 5 U.S.C. § 706)). Judicial scrutiny of agency action thus protects the people from agencies that overstep their bounds in the careful balances of power in our tripartite system. *See, e.g.*, *Gutierrez-Brizuela*, 834 F.3d at 1149 (Gorsuch, J., concurring) (noting that existing precedent regarding deference to agency action "permit[s] executive bureaucracies to swallow huge amounts of

core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design").[9]

Courts thus play an important role "in ensuring that agencies have engaged in reasoned decisionmaking."[10] *Judulang v. Holder*, 565 U.S. 42, 53 (2011); *see Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374-75 (1998) (the APA "establishes a scheme of 'reasoned decisionmaking,'" which "promotes sound results" (citation omitted)); *see also Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 378 (1989) ("courts ensure that agency decisions are founded on a reasoned evaluation of the relevant factors" (internal quotation marks and citation omitted)). Indeed, the APA *requires* a court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . .

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[9] The U.S. Court of Appeals for the Third Circuit aptly described the importance of the judiciary's role in policing agencies in *New Jersey v. Department of Health & Human Services*, 670 F.2d 1262, 1281 (3d Cir. 1981):

> The APA notice and comment procedures exist for good reason: to ensure that unelected administrators, who are not directly accountable to the populace, are forced to justify their quasi-legislative rulemaking before an informed and skeptical public. When these procedures are not followed in situations where they are in fact applicable, a court promotes neither the agency's ultimate mission nor respect for the law by ignoring the agency's indiscretion or condoning the agency's shortcut.

[10] The significant power of the administrative state has increased the need for judicial scrutiny of agency action, and brought several cases questioning the appropriate scope of judicial review of agency action to the Court this term. *See, e.g.*, *Kisor v. Wilkie*, No. 18-15, now pending before the Court (cert. granted Dec. 10, 2018).

arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

Importantly, the APA does not ask courts to supervise every agency action or to substitute their own decisionmaking or policy views for that of an agency; that would run afoul of the separation of powers as well. *See, e.g.*, *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 66-67 (2004); *State Farm*, 463 U.S. at 43; *Citizens to Pres. Overton Park*, 401 U.S. at 416.[11] Instead, the APA, through the courts, provides a defined but fundamental "check" that is critical to all branches of government. *See Judulang*, 565 U.S. at 52-53. It asks the courts only, but significantly, to ensure that the basic requirements of the APA—and therefore the basic protections it affords to the public—have been satisfied.

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[11] As Justice Blackmun explained in a dissent joined by Justice Scalia in *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 798, 800 (1990) (Blackmun, J. dissenting):

> Rarely will a court feel so certain of the wrongness of an agency's empirical judgment that it will be justified in substituting its own view of the facts. But courts can and should review agency decisionmaking closely to ensure that an agency has adequately explained the bases for its conclusion, that the various components of its policy form an internally consistent whole, and that any apparent contradictions are acknowledged and addressed. This emphasis upon the decisionmaking *process* allows the reviewing court to exercise meaningful control over unelected officials without second-guessing the sort of expert judgments that a court may be ill equipped to make.

For this reason, the district court's decision to vacate the Secretary of Commerce's action and remand to the agency was a proper exercise of the judicial oversight required by the APA. As Judge Furman acknowledged, "while it is the agency's job to make the decisions Congress has assigned to the agency, it is the courts' job to apply the APA." *See New York*, 351 F. Supp. 3d at 630. This is precisely what Judge Furman did in his lengthy decision reversing the Secretary's arbitrary and capricious action here. *See supra*, Part II.b.

B. Permitting Agencies to Deviate from the APA's Requirements Would Set Dangerous Precedent

An abdication of the responsibility of the courts to enforce the APA would unravel the protections the APA put in place against uninformed and opaque agency actions and reintroduce the concerns that occupied the minds of the framers of the APA regarding the dangerousness of entrusting administrative agencies with so much power without any accountability. *See Dep't of Transp. v. Ass'n of Am. R.R.*, 135 S. Ct. 1225, 1234 (2015) (Alito, J., concurring) ("Liberty requires accountability. When citizens cannot readily identify the source of legislation or regulation that affects their lives, Government officials can wield power without owning up to the consequences."); *Sierra Club*, 657 F.2d at 400-01 (unelected administrators may perform policymaking only if they serve the public from whom their power derives); *see also EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 132 (D.C. Cir. 2015) (Kavanaugh, J.) ("[R]emand without vacatur creates a risk that an agency may drag its feet and keep in place an unlawful agency rule."). If the system of checks and balances envisioned by the Constitution is to be maintained, the courts must

serve as the check on agency action. *See* Cass R. Sunstein, *In Defense of the Hard Look: Judicial Activism and Administrative Law*, 7 Harv. J. L. & Pub. Pol'y 52, 53, 55, 57, 58-59 (1984) ("Administrative agencies were a severe intrusion on the original constitutional structure"; judicial review of agency action "promote[s] some of the original goals of the separation of powers scheme").

Without the possibility of meaningful judicial review, agencies would be unaccountable to the very individuals they are designed to serve. This principle is well illustrated by cases requiring agencies to explain the basis for their decisions. For example, in *Encino Motorcars, LLC v. Navarro*, 579 U.S. ___, 136 S. Ct. 2117, 2126-27 (2016), this Court held that the U.S. Department of Labor (DOL) could not, consistent with the APA, alter its long-standing interpretation of overtime exemptions without providing a reasoned explanation for its change. *Id.* The Court concluded that DOL had offered "barely any explanation" at all for its change and had "said almost nothing" about its reasoning—contrary to the APA's requirements. *Id.* at 2126, 2127. All Members of this Court agreed that agency accountability requires reasoned explanation, and that courts play a critical role in enforcing this accountability.[12] *See id.* at 2127 (majority opinion); *id.* at 2127-28 (Ginsburg, J., joined by Sotomayor, J., concurring); *id.* at 2129 (Thomas, J., joined by Alito, J., dissenting from remand but agreeing with majority conclusion that no agency deference was warranted); *see also, e.g.*, *Allentown*, 522 U.S. at 374-75; *State*

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[12] The Court subsequently split on the substantive question of whether the workers in question were covered by the overtime statute. *See generally Encino Motorcars, LLC v. Navarro*, 584 U.S. ___, 138 S. Ct. 1134 (2018).

Farm, 463 U.S. at 52. In such cases, it is the procedural protections of the APA, and its requirement that agencies engage in reasoned decisionmaking, that ensures that agencies are responsibly serving their constituents.

Without a meaningful judicial role in enforcing the APA—both through reversing harmful agency decisions and compelling necessary agency action—members of our most vulnerable communities would in particular be placed at considerable risk in almost every aspect of their lives. Agencies would be able to delay applications for immigration relief, food stamps, or affordable housing; disregard their affirmative obligation to implement desegregation; or site toxic or nuclear waste facilities in poor or minority communities without repercussions. It is precisely these types of abuses of agency discretion and power that the APA is designed to—and does—protect against, by way of judicial enforcement of its requirements. *See, e.g.*, *Ahmed v. Holder*, 12 F. Supp. 3d 747, 759-62 (E.D. Pa. 2014) (concluding that more than six-year delay in adjudicating plaintiff's application for legal permanent residency was unreasonable and so violated the APA, noting the "real and not insubstantial effects on plaintiff's life and livelihood" and limitations on his "ability to travel and the financial and bureaucratic burdens of regularly filing for work and travel permits" (quotations omitted)); *Thompson v. U.S. Dep't of Hous. & Urban Dev.*, 348 F. Supp. 2d 398, 463-65 (D. Md. 2005), *aff'd*, 404 F.3d 821 (4th Cir. 2005) (concluding that APA is the "appropriate enforcement mechanism to address [the U.S. Department of Housing and Urban Development's] failure to act to fulfill its statutory duty to consider the regional effects of its desegregation policies," where government presented "virtually no evidence" to indicate it evaluated

the "effect of its policies on the racial and socioeconomic composition of the surrounding area and thus consider[ed] regional approaches to promoting fair housing opportunities for African-American public housing residents in the Baltimore region"); *see also supra*, Part III.b (collecting cases).

For those in the minority, who are often excluded from or unheard in the political process, the APA is their protection against arbitrary rule. It is a critical judicial bulwark against unchecked agency action, which could have devastating effects on our most economically and politically vulnerable residents. If the APA's protections are not enforced, agencies are left to engage in wide-ranging rulemaking, adjudication, and other decisionmaking at their own whim. This is precisely what the Founders feared, what our tripartite system of government is intended to prevent, and what judicial enforcement of the APA can deter.

CONCLUSION

In light of the fundamental protections the APA affords to the general public and the critical checks it provides on agency power, *amici curiae* respectfully request that the Court affirm the decision of the district court finding that the Secretary of Commerce's decision to add a citizenship question to the decennial census questionnaire was arbitrary and capricious and contrary to law.

Respectfully submitted,

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APPENDIX

APPENDIX

List of *Amici Curiae*

Lawyers for Civil Rights (LCR) fosters equal opportunity and fights discrimination on behalf of people of color and immigrants. LCR engages in creative and courageous legal action, education, and advocacy in collaboration with law firms and community partners. Communities of color, low-income communities, and immigrants are particularly affected by agency action in a broad range of contexts—from public benefits programs to subsidized housing to transportation to student loans. As a result, LCR has a strong interest in ensuring that courts scrutinize agency action under the Administrative Procedure Act (APA) when agencies act arbitrarily, capriciously, irrationally, or illegally. LCR regularly advocates for APA review when the interests of people of color, immigrants, and low-income individuals are at stake. *See, e.g., Centro Presente v. Trump*, 332 F. Supp. 3d 393 (D. Mass. 2018).

The **League of United Latin American Citizens** (LULAC) is the largest and oldest Hispanic organization in the United States. LULAC advances the economic condition, educational attainment, political influence, housing, health, and civil rights of Hispanic Americans through community-based programs operating at more than 1,000 LULAC councils nationwide. LULAC views the APA as a mechanism for protecting the interests of its constituents.

Human Rights Campaign (HRC) is the largest national lesbian, gay, bisexual, and transgender political organization. HRC envisions an America where lesbian, gay, bisexual, and transgender people are ensured of their basic equal rights, and can be open,

honest, and safe at home, at work, and in the community. Among those basic rights are freedom from discrimination and access to equal opportunity and government services.

The National Immigrant Justice Center (NIJC) is a Chicago-based national non-profit, accredited since 1980 by the Board of Immigration Appeals (BIA) or the Department of Justice to represent noncitizens. Though its staff and network of more than 1,500 pro bono attorneys, NIJC has a long history of serving immigrant communities in Chicago and throughout the Midwest. NIJC provides legal education and direct representation to immigrant communities, and also advocates on immigration issues at the national level. NIJC screens or serves more than 15,000 people each year. Given this work, NIJC has a deep interest in the rights of noncitizens and the potential chilling affect that a citizenship question on the census will have on the willingness of immigrant communities, whether documented or not, to come forward and receive services.

The **Center for Constitutional Rights** (CCR) is a national, not-for-profit legal, educational and advocacy organization dedicated to advancing rights guaranteed by the United States Constitution and international law in order to protect individuals and communities most vulnerable to unjust state practices.

The **Charles Hamilton Houston Institute for Race and Justice at Harvard Law School** (CHHIRJ) was launched in September 2005 by Charles J. Ogletree, Jr., Jesse Climenko Professor of Law. The Institute honors and continues the unfinished work of Charles Hamilton Houston, one of the 20th century's most important legal scholars and litigators. As the Vice Dean of Howard Law School, Houston engineered

the multi-year legal strategy that led to the unanimous 1954 Supreme Court decision, *Brown v. Board of Education*, repudiating the doctrine of "separate but equal" schools for black and white children. CHHIRJ uses his model to address contemporary challenges in our increasingly multi-racial society. Their long-term goal is to ensure that every member of our society enjoys equal access to the opportunities, responsibilities and privileges of membership in the United States. As part of their long-standing commitment to desegregation, CHHIRJ has a strong interest in preserving the APA as a means of compelling agencies to honor their affirmative obligations to protect and serve minority communities.

Founded in 1917, the **Urban League of Eastern Massachusetts** (ULEM) is one of the oldest affiliates within the National Urban League movement. From the time that its doors opened, ULEM has been employing a multi-point strategy to deliver services and programs which aim to increase self-reliance, specifically in the area of workforce development. The mission of ULEM is to be a champion of civil rights dedicated to helping people improve their lives and to build stronger communities by providing local residents with education, job training, and placement at no cost. For nearly 100 years, ULEM's programs and services have given hope to program participants and made a lasting, positive impact in the community. Many of ULEM's constituents rely on programs administered by federal agencies; ULEM believes the APA is necessary to ensuring these programs are administered fairly and consistently and with regard for their impact on communities in need.

Established in 1981, **Centro Presente** is a member-driven, state-wide organization dedicated to the self-

determination and self-sufficiency of the Latin American immigrant community of Massachusetts. Through the integration of community organizing, leadership development, and basic services, Centro Presente gives its members a voice and builds community power. Centro Presente is committed to ensuring its members have a say in the development, administration, and alteration of federal programs that affect their day to day lives.

In 1915, the **Boston Foundation** was launched by a father and son team. Through two World Wars, the Great Depression, the polio epidemic and other challenges, their funding responded to the needs of poor immigrants and other struggling Bostonians. The Foundation is committed to principles of equality and justice for all and believes the APA is a critical tool to accomplishing those goals.

The **Brazilian Worker Center** is a grassroots, community-based, non-profit worker center that represents, supports, and organizes the Brazilian and wider immigrant community to defend and advocate for their rights. As part of its mission to further social justice for Brazilian and all immigrant workers, and in solidarity with other affected communities, the Center looks to the APA as a bulwark against arbitrary agency action.

The **Jewish Alliance for Law and Social Action** (JALSA) is a member-based organization, inspired by Jewish teachings and values, dedicated to being a strong, progressive, inter-generational voice for social justice, civil rights and constitutional liberties. JALSA is interested in ensuring the APA remains a mechanism for challenging arbitrary and capricious agency action as part of its broader work promoting civil rights protections and its fundamental belief in respecting the dignity of every individual.

The **Union of Minority Neighborhoods** (UMN) is a Boston-based community organization founded in 2002 to increase activism, empowerment, and opportunity in communities of color. UMN provides skills training to community activists and technical assistance to community based organizations in a number of areas, including housing, employment, background check reform, economic development, and voting rights. UMN has participated in amicus briefs in both state and federal courts for 15 years. It is of critical importance to UMN that the laws enacted to protect vulnerable individuals from arbitrary decision-making remain meaningful tools in the eradication of discrimination and the promotion of equality.

Worcester Interfaith (WI) is a multi-issue, multi-racial broad-based community organization, comprised of 26 dues-paying institutions that reflect the religious, racial, ethnic and geographic diversity of the city. WI has built bridges between congregational and community leaders and across religious, socio-economic, racial and ethnic boundaries to accomplish much in the areas of jobs, neighborhood improvements, public safety, education and youth, and to draw attention to the disproportionate ways in which these issues affect low-income, minority and newcomer residents. Many of WI's constituents rely upon benefits and programs administered by agencies, such that WI has an interest in ensuring agency administration and rulemaking comply with the principles embodied in the APA.

Boston Chinatown Neighborhood Center (BCNC) empowers Asians and new immigrants to build healthy families, achieve greater economic success, and contribute to thriving communities by providing a broad range of innovative and family-centered programs and

services to more than 8,000 children, youth, and adults every year. BCNC has a vested interest in ensuring its constituents, the vast majority of whom are immigrants, are treated fairly and rationally by the federal agencies that serve them.

The **Massachusetts Voter Table** (MVT) was formed in 2011 to build power among people of color, working-class communities, young people, and new citizens. As a coalition of community organizations, MVT increases civic engagement in communities of color, low-income people, and youth to fight for representation in Massachusetts. MVT views the APA as an important tool in the fight for racial and economic justice, as a means of holding agencies accountable to the communities they serve.

Neighbor to Neighbor Massachusetts Action Fund (N2N) is building democracy by putting people of color, immigrants, women, and the working class at the center of the political process. By educating voters, developing local leadership, and electing candidates who put people and planet before profit, N2N is building the power to confront the triple crisis of racism, economic inequality, and environmental degradation. Through every election, N2N is transforming government to reflect the will and wisdom of the new majority. N2N is strongly committed to the principle of governmental accountability and believes the APA is necessary to ensuring transparency, honesty, and inclusivity in executive decision-making.

The **Massachusetts Immigrant and Refugee Advocacy Coalition** (MIRA) is the largest coalition in New England promoting the rights and integration of immigrants and refugees. MIRA advances this mission through education and training, leadership development, institutional organizing, strategic com-

munications, policy analysis and advocacy. MIRA is a respected leader on immigrant issues at the state and national levels, and an authoritative source of information and policy analysis for policymakers, advocates, immigrant communities and the media. MIRA has a vested interest in ensuring that the Department of Homeland Security and other federal agencies do not act arbitrarily or capriciously in their promulgation of rules and administration of programs that serve immigrants and refugees.

Inquilinos Boricuas en Acción (IBA) is a nonprofit organization and a dynamic community development corporation that started in the South End neighborhood of Boston to address the displacement of low-income families due to urban development. IBA offers affordable housing and supportive programming to improve the knowledge, life skills and health of participants of all ages. For 50 years, IBA has developed housing that is associated and financed by different supportive programs, while developing leaders who support and encourage themselves, their families and their neighbors. IBA has a strong interest in preserving the APA as a means of compelling federal housing and other agencies to consider the effects of their policies on low-income and minority communities.

Since 1968, **Sociedad Latina** has been working in partnership with Latino youth and families to end the destructive cycle of poverty, inequality to access of health services, and lack of educational and professional opportunities in their communities. Sociedad Latina introduces new and innovative solutions to the most critical problems facing young Latinos today, through an approach that celebrates diverse Latino heritages and enables young people to forge identities with deep roots in Latin culture. Sociedad Latina

regards the APA as a tool of empowerment, as it enables communities of color to check the rulemaking authority of administrative agencies.